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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,430	04/16/2004	Hirokazu Sakai	252010US0	9934

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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VENKAT, JYOTHSNA A

ART UNIT	PAPER NUMBER
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1619

NOTIFICATION DATE	DELIVERY MODE
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01/07/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/825,430	<b>Applicant(s)</b> SAKAI ET AL.	
	<b>Examiner</b> JYOTHSNA A. VENKAT	<b>Art Unit</b> 1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-8, 10-12, 14 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, 10-12, 14 and 16-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/20/09 has been entered.

Claim 4 has been cancelled as per applicants' amendment dated 10/20/09

### **Status of claims**

**Claims 4, 13 and 15 are cancelled.** Claim 9 is withdrawn from consideration as being drawn to non-elected subject matter (election with traverse dated 11/29/07). Claims 1-3, 5-8, 10-12, 14 and 16-21 are currently examined in the application. Generic claims are examined to the extent that it reads on the elected species formula (1) under amphipathic amide lipid (component (A)) and ethylene glycol stearate under component (B).

### ***Claim Rejections - 35 USC § 112***

Claims 1-3, 5-8, 10-12, 14 and 16-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

There is lack of written description for “wherein a ratio of components (A):(B) ranges from 1:1 to 1:30”.

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**In accordance with MPEP 714.02 applicants' should specifically point out support for any amendment made to the disclosure.**

***Response to Arguments***

Applicant's arguments with respect to claims rejected under 103 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

Claims 1-3, 5-8, 10-12, 14 and 16-21 are rejected under 35 U.S.C. 103(a) as being obvious over the combination of EP 1,166,766 ('766) and XP -002295514 ('514) and U. S. patent 5,876,705 ('705).

*The instant application is claiming hair cleansing composition comprising:*

- 1. Amphipathic amide lipid of formula 1*
- 2. compound belonging to B(species is ethylene glycol distearate)*
- 2. surfactant*
- 3. cationic polymer*

EP '766 teaches external preparation compositions. See the abstract, and see page 2, formula I for ingredient I claimed. see also pages 3-5 for the amide lipids , which are species belonging to formula I ( Ingredient 1). EP '766 at paragraph 22 teaches adding surfactants to compositions. The weight percent of the surfactant is 0.01-20% and the weight percent of amide lipid 0.001-50%. EP '766 at paragraph 24 teaches hair care applications and this includes shampoo. EP under this paragraph suggests adding components **ordinarily employed in hair cosmetics**. Examples 3-4 are drawn to hair formulations. The difference between EP and the

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instant application is EP does not teach claimed species belonging to B, which is ethylene glycol distearate and cationic polymer.

XP '514 teaches cleansing and conditioning of hair and at page 66 teaches the ingredients conventionally used. These include surfactants, conditioning agents like cationic polymer and the function of cationic polymer is to improve combability and opacifiers and pearly gloss – imparting substances and the function of opacifiers... substances is to provide pearlescent appearance or creamier product. Thus XP '514 explicitly teaches the ingredients conventionally used in shampoo and this includes claimed cationic polymer and claimed ethylene glycol stearate.

Patent '705 teaches conditioning shampoo compositions. See the abstract; see col.2, ll 25-30 for anionic, amphoteric and non-ionic surfactant. See col.s 4-5 and col.6, ll 1-34 for anionic surfactant. See col.6, ll 35-68 and col.s 7-8 and col.9, ll 1-6 for amphoteric surfactant, see col.9, ll 8-68 and col.10, ll 1-14 for non ionic surfactant, see col. 17, line 7 through col.19, line 27 for cationic polymers. Patent at col.2, ll 35-39 teaches conditioning agents and these can be silicones or cationic surfactant or cationic polymers. see col.19, ll 5-20 for claimed cationic cellulose and cationic guar gum. See paragraph bridging col.s 21-22 for suspending agents. Preferred suspending agent is claimed species(see col.21, ll 60-65). See also examples VI-X for ethylene glycol distearate, cationic polymer, which is polyquaternium 10 and surfactant. With respect to ratio's of component A :B, EP teaches the weight percent of the amphipathic lipid being 0.001-50% and Patent '705 teaches the weight percent of suspending agent being 0.1- to about 10%. The weight percent claimed in claim 1 for component (A) and (B) is within the weight percent taught by EP and patent therefore the ratio of components A:B claimed is met

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by the combination of both the references additionally discovery of optimum or workable ranges by routine experimentation within the ken of skilled chemist . *In re Aller* 105 USPQ 233,235.

Accordingly it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the compositions of EP '7669 and combine with agents that are conventionally used in hair care like surfactants , cationic polymers and suspending agents taught by XP '514 and also taught by patent '705 expecting beneficial effect to hair. One of ordinary skill in the art would be motivated to add the ingredients of '705 with the reasonable expectation of success that the compositions which has the diamide provide moisturizing feel and silkiness to the hair and adding cationic polymers provide conditioning property to the hair and adding surfactant provide cleansing property to hair and pearlescent agent like ethylene glycol stearate provide pearlescent effect. Thus the compositions not only cleanse the hair but also provide moisturizing and conditioning properties to the hair. This is a prima facie case of obviousness.

Examiner considered applicants' remarks with respect to data in the specification. Whether the unexpected results are the result of unexpectedly improved results or a property not taught by the prior art, the "objective evidence of nonobviousness must be commensurate in scope with the claims which the evidence is offered to support." See *In re Peterson* 65 USPQ 2d 1379,1382-85. (data showing improved alloy strength with the addition of 2% rhenium did not evidence unexpected results for the entire claimed range of about 1-3% rhenium); *In re Grasselli*, 713 F.2d 731, 741, 218 USPQ 769, 777 (Fed. Cir. 1983) (Claims were directed to certain catalysts containing an alkali metal. Evidence presented to rebut an obviousness rejection compared catalysts containing sodium with the prior art. The court held

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this evidence insufficient to rebut the prima facie case because experiments limited to sodium were not commensurate in scope with the claims.).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EYLER YVONNE (BONNIE) can be reached on 571-272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /  
Primary Examiner, Art Unit 1619